



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201704021**
Release Date: 1/27/2017
UIL Code: 501.00-00
501.33-00
501.36-00

Date: November 4, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: August 12, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date of formation
C = Organizer/Member
D = Organizer/Member
F = Organizer/Member
G = For-profit entity
H = Local department of aging
L = State agency
M = State
X dollars = Amount
Y dollars = Amount

UIL:

501.00-00
501-33.00
501.36-00

Dear :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under Section 501(c)(3) of the Code? No, for the reasons stated below.

Facts

You formed as a Limited Liability Company (hereafter, "LLC") on B in the state of M. Your organizers/members include C, D and F. Your formation document is silent regarding your purpose and how assets will be distributed upon dissolution.

You do not have an operating agreement. You also do not have Bylaws. Your name includes the name of one of your members, C. According to your application, your Board consists of an office manager and four drivers.

Your purpose is to provide non-ambulatory transportation for individuals that are assigned daily by the local department of aging, known as H, and L. Clients of L are the general public and L schedules riders who go to non-ambulatory medical appointments. You provide transportation services for individuals for appointments for medical, dental and employment related activities. You also provide transportation services for individuals to social functions.

There is related a LLC named G, which also provides the same services as you. G is owned by C. G has been providing transportation services as a contracted vendor for H and L, as well as private transportation, for approximately seven years. G will remain a separate business and will continue working with H and L as they have in the past.

You provided copies of contracts as a non-ambulatory transportation provider with H and L, but the contracts were between G and those entities. You said you do not have any contracts.

Budget cuts have caused H to eliminate programs that provided transportation. G is contracted to provide transportation services for H and has been providing those services for several years. You are formed for the clientele that were being transported by G under these programs. You said you are offering them a chance to continue to be transported, just as they have in the past, only your company name will be different.

You said that G has four vehicles and four drivers providing transportation for H and L. These vehicles and drivers are used approximately 45% of the time by you to provide rides. You also share a physical address with G.

You said you need to be a public charity in order to obtain donations, grants and monetary gifts. These funds will help maintain your business so that you can continue to provide safe and reliable transportation to these individuals in their time of need. You are not a taxi service to whoever calls. The rides will be scheduled and reoccurring. These rides will replace what they are losing through the county budget cuts.

You will charge a rate of x dollars per ride or y dollars if it is round trip. This will allow the clients to continue being transported to their employment, appointments and daycare programs. You said you have nothing to do with the fare being charged to your clients; therefore, you cannot reduce a fare. The money you receive covers gas, insurance, maintenance for the vehicles and the general cost of running a business.

Your budgets include payroll expenses that account for more than 60% of your annual revenue. The remaining 30% or so of your revenue that you do not anticipate expending you have classified as "net income."

Your mission is to "lessen the burden of government assistance by providing safe and reliable transportation for families in need, which no longer have access."

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that, in order to be exempt as an organization described in Section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit its purposes to one or more exempt purposes and

do not expressly empower it to engage, otherwise than as an insubstantial part, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities in not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an exempt organization must serve a public rather than a private interest. The organization must demonstrate that it is not organized or operated to benefit private interests such as "designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests." Thus, if an organization is operated to benefit private interests rather than for public purposes, or is operated so that there is prohibited inurement of earnings to the benefit of private shareholders or individuals, it may not retain its exempt status.

Rev. Rul. 85-2, 1985-1 C.B. 178, sets forth the criteria for determining whether an organization's activities are lessening the burdens of government: whether the governmental unit considers the organization's activities to be its burden; and whether these activities actually lessen the burden of the governmental unit. An activity is a burden of the government if there is an objective manifestation by the governmental unit that it considers the activities of the organization to be its burden. The interrelationship between the governmental unit and the organization may provide evidence that the governmental unit considers the activity to be its burden. Whether the organization is actually lessening the burdens of government is determined by considering all of the relevant facts and circumstances.

In Better Business Bureau of Washington D.C.. Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

In Harding Hospital Inc. v. United States, 505 F.2d 1068 (6th Cir. 1974), the court held that an organization seeking a ruling as to recognition of its tax-exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute.

In International Postgraduate Medical Foundation v. Commissioner, TCM 1989-36 (1989), the Tax Court concluded that when a for-profit organization benefits substantially from the manner in which the activities of a related non-profit organization were carried on, the latter organization was not operated exclusively for exempt purposes within the meaning of Section 501(c)(3), even if it furthers other exempt purposes.

Application of law

You are not as described in Section 501(c)(3) of the Code because you are not organized and operated exclusively for charitable purposes.

You are not as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you fail both the organizational and operational tests.

You do not meet the requirements in Treas. Reg. Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4). Your organizing document is silent regarding your purpose and dissolution. Therefore, you do not meet the requirements in Section 501(c)(3) of the Code and you fail the organizational test.

You do not meet the provisions of Treas. Reg. Section 1.501(c)(3)-1(c)(1) because more than an insubstantial part of your activities are not in furtherance of an exempt purpose. You are formed to conduct the same activities as the for-profit, G, but you said you want to cover more of your expenses by obtaining gifts, grants and contributions. You said the only difference between you and G is the company name. These facts show you are operating for substantial non-exempt private purposes.

You are not described in Treas. Reg. Section 1.501(c)(3)-1(c)(2) because your earnings inure to the benefit of private shareholders. You are not set up as a non-profit organization; rather, you are set up as a for-profit LLC. Your members (shareholders) are individuals. The way you are formed, in and of itself, precludes you from qualifying from exemption.

You said the money you receive will cover gas, insurance, maintenance for the vehicles and the cost of running a business. You use the cars owned by G. From the general public's perspective, it is not clear how you are distinguishable from G, as you have very similar names and share an address. You are not defined in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because you are operating to confer the advantages of tax-exempt status to G, as you can receive donations to help cover expenses of cars they own. You further the personal interests of C, as she is the owner of G.

You indicated you "lessen the burden of government assistance by providing safe and reliable transportation for families in need, which no longer have access." As stated in Rev. Rul. 85-2, an activity is a burden of the government if there is an objective manifestation by the governmental unit that it considers the activities of the organization to be its burden. You have not shown that a governmental unit considers your activity to be its burden, or that you actually lessen that burden.

You are like the organization in Better Business Bureau. Although you may serve some charitable purposes, the presence of non-exempt private purposes precludes exemption under Section 501(c)(3) of the Code.

Similar to the organization in Harding Hospital, you have the burden of proving that you satisfy the requirements for tax exemption. You have failed to prove that you are not operating for the benefit of C and her for-profit organization, G. Therefore, you do not qualify for exemption under Section 501(c)(3) of the Code.

You are similar to the organization described in International Postgraduate Medical Foundation (IPMF). Your founder owns a for-profit company which benefits substantially from the manner in which your activities are conducted. Like IMPF, you are not operated exclusively for exempt purposes within the meaning of Section 501(c)(3), even if you further other exempt purposes.

Your position

You said you are not operating in a commercial manner because you do not have commercially licensed drivers. You said the business does not contract with anyone, does not take general public rides and does not operate as a taxi service. The individuals you provide transportation for are handicapped and special needs individuals that have preset times to ride to work, appointments or adult daycare.

You said you should not be confused with G. G “does do contracts but it is a totally separate entity.” You said “no person owns shares of the business.” You seek donations to cover the cost of gas and maintenance. Your Board of Directors is not compensated, but you give reasonable compensation to employees.

Our response to your position

Although you stated that you should not be confused with G, you are operating in a manner indistinguishable from G. You are not operating exclusively for exempt purposes, as described in Section 501(c)(3) of the Code, as describe above.

Conclusion

Based on the facts presented, you do not meet the organizational and operational tests in Treas. Reg. Section 1.501(c)(3)-1(a)(1). Your activities do not exclusively further an exempt purpose and your income inures to the benefit of C. Accordingly, you do not qualify for exemption as an organization described in Section 501(c)(3) of the Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892